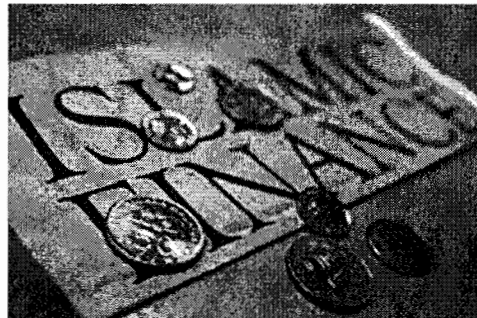
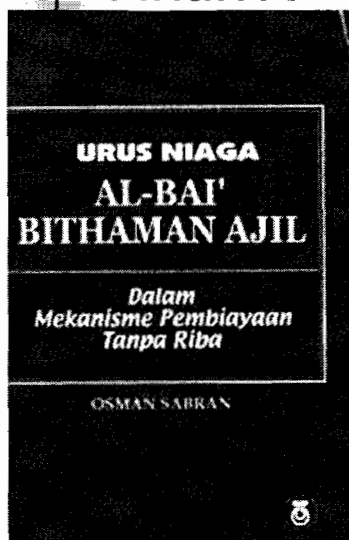


Issues in Islamic Home Finance: A Case Study of Abandoned Housing Projects

Associate Professor Dr.
Nuarrual Hilal Md. Dahlan
ACIS
Institute for Governance
and Innovation Studies
Universiti Utara Malaysia



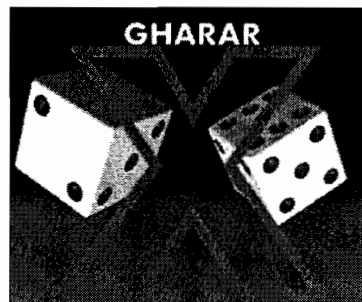
Various types of Islamic Home Finance



- *Bay' Bithaman al-Ajil* – deferred sale
- *Musharakah al-Mutanaqisah* – Islamic partnership
- *Ijarah Thumma al-Bay'* – lease
- *Ijarah Mauful Bi al-Zimmah* – lease
- *Commodity Murabahah* – likened to personal loan (*tawarruq*) to purchase a house

Purposes of Islamic Home Finance

- To avoid *riba'*
- To avoid *gharar*
- To avoid other elements not recognized by Islam – *maysir*, inequitable transactions



Bay' Bithaman al-Ajil (BBA)

- Property Purchase Agreement (PPA)
- Property Sale Agreement (PSA)



Statutory Standard Sale and Purchase Agreements – Housing Development (Control and Licensing) Regulations 1989



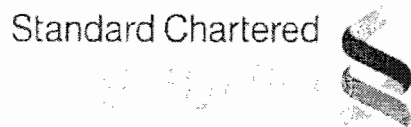
- Schedule G (landed property): Full sell then build
- Schedule H (flat): full sell then build
- Schedule I (landed property): quasi build then sell (10-90)
- Schedule J (flat): quasi build then sell (10-90)

Property Purchase Agreement (PPA)



- PPA provides that the purchasers agree to sell the property, which they purchased from the developer, at the price similar to the price they agreed with the developer, to that particular Islamic bank or IWB and on the undertaking they (the purchasers) are to re-purchase the property from the bank.

Property Sale Agreement (PSA)



- The property which has been vested in the bank is sold by the bank back to the purchasers, at an increased price.
- The purchasers are required to repay the bank this price by way of instalments for a specified duration until the sale price is fully settled.
- The bank will get profit, being the difference between the price stipulated in the PPA/the said agreement and the price stated in the PSA (the sale price).

BBA



- *Bay' al-Inah* (deferred sale with marked up price) + *Murabahah* (to up price)

Gharar



- "And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property" (al-Baqarah(2): 188).

"O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will: Nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful!" (al-Nisa (4): 29).

Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition. (al-Nahl (16): 90).

Gharar



- Uncertainty
- Detrimental act, causing harm or damage
- *Gharar* transaction means undertaking buying and selling activities based on unknown or unspecified terms, conditions and subject matter or the inability for the surrender of the subject matter of the contract.

Gharar - *Hadith*



■ Yahya related to me from Malik from Abu'r-Rijal Muhammad ib Abd al-Rahman ibn Haritha from his mother, Amra bint Abd ar-Rahman that the Messenger of Allah (SAW) forbade selling fruit until it was clear blight. Malik said 'Selling fruit before it has begun to ripen is an uncertain transaction (*gharar*)' (Muwatta' Imam Malik)

Gharar - *Hadith*



■ "The Prophet SAW prohibited a person from selling an animal foetus yet to be born while it is still in the mother's womb, when the mother was not part of the sale"

Gharar - *Hadith*

- Yahya related to me from Malik from Abdullah ibn Dinar from Abdullah ibn Umar that a man mentioned to the Messenger of Allah, may Allah bless him and grant him peace, that he was always being cheated in business transactions. The Messenger of Allah, may Allah bless him and grant him peace, said, "When you enter a transaction, say, 'No trickery.' So whenever that man entered a transaction, he would say, 'No trickery.' " (Sunan Ibnu Majah, Book 31, Number 31.45.99).



Riba'

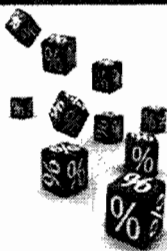


Allah declares war on Riba

"O you who believe! Fear Allah and obey up what commands (due to you), have Riba (from now, forever) if you are (truly) believers."

"And if you do wedge it, then take a notice of war from Allah and His Messenger..."
[al-Baqarah 2:278-279]

"Allah will destroy Riba"
[al-Baqarah 2:276]



- Interest/usury in lending transactions
- Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever). (al-Baqarah (2): 275).

Contract of sale involving a non-existent subject matter



- The subject matter in a contract must actually exist at the conclusion of the contract.
- If the subject matter does not exist, generally, the contract is void even though it could probably exist thereafter, or even if is established then that it would exist in the future but the existence is still to the detriment of any party to the contract.

Abandoned Housing Project in Malaysia



Causes



Grievances

NEGARA

Pembeli kecewa rumah terbangkalai



Wang habis bayar bank, projek terus terbangkalai

BERSEKUTUAN

KUALA LUMPUR - Pembangunan projek rumah di kawasan Bangsar - Bukit Timah, Kuala Lumpur, yang telah dibayar bank, tetapi projek itu masih terbangkalai.



Projek ini telah dibayar bank, tetapi projek itu masih terbangkalai.



Projek ini telah dibayar bank, tetapi projek itu masih terbangkalai.

Projek ini telah dibayar bank, tetapi projek itu masih terbangkalai. Projek ini telah dibayar bank, tetapi projek itu masih terbangkalai. Projek ini telah dibayar bank, tetapi projek itu masih terbangkalai.

Cases involving BBA

- *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn. Bhd & Ors (Koperasi Seri Kota Bukit Cheraka Bhd, third party)* [2008] 5 MLJ 631 (High Court).
- *Malayan Banking Bhd v Ya'kup bin Oje & Anor* [2007] 6 MLJ 389 (High Court at Kuching).
- *Affin Bank Bhd v Zulkifli bin Abdullah* [2006] 3 MLJ 67 (HC at KL)
- *Malayan Banking Bhd v Marilyn Ho Siok Lin* [2006] MLJU 283 (HC at Kuching).
- *Pasar raya Peladang, Dato' Haji Nik Mahmud and Emcee Corp.*

Opinion of BBA in house financing in Malaysia involving abandoned housing projects

- BBA can be a void instrument under Islamic Law for it inherently involves *gharar al-fahish* (exorbitant) elements – housing pending completion – detrimental to the interests of purchasers
- Inadequate terms in BBA
- Absurd – the house which is subject to the charge is also a security to the BBA. How could the bank as the owner of the property can become chargee?



Opinion

- Inequitable – profit margin is higher than the debts owed. *Riba* transaction – less risk or no risk at all.
- In abandoned housing projects – purchasers are still required to pay the monthly installment
- The banks absolve any liability for ensuring the completion of the houses.



Opinion

- Purchasers suffer pecuniary and non-pecuniary damage and losses, the bank escapes liability
- The bank should be responsible as the owner of the house – delivery of vacant possession – good workmanship – rehabilitation.

Suggestions

- Islamic banks should only use fully completed houses in BBA, not pending completion – to avoid *gharar*
- Takaful home insurance against abandonment and poor workmanship
- The profit margin should be reduced to avoid *riba'* – *al-ghunmu bil ghurmi* – profit must commensurate with risk

Suggestions

- The BBA should provide responsibilities of the bank in the event of abandonment – rehabilitation, return of money, damages, compensation
- The terms in the BBA should strike a balance between the interests of the bank and the interests of the purchaser borrowers

